IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

Crl.MC.No. 1536 of 2007()

S.T.NO.1376 OF 2006 OF J.F.C.M-II, PEERMEDU

PETITIONER: ACCUSED

SRI.MANOJKUMAR,
AKSHRA CEMENT VALLEY INDUSTRIES,
VALLANOOR,MULLAR,
CHATHAMANGALAM,
KOZHIKODE.

BY ADV. SRI.T.SETHUMADHAVAN

RESPONDENTS: COMPLAINANT & STATE

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1. SRI.ABRAHAM DEVASSYA,
PALLIKUNNEL HOUSE,PERUVANTHANAM,PEERMEDU.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.T.A.UNNIKRISHNAN
SRI.P.P.BIJU
PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 16/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1536 of 2007

Dated this the 16th day of July, 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. The petitioner has come to this Court with a plea that cognizance should not have been taken and the cognizance taken deserves to be quashed by invoking the powers under Section 482 of the Code of Criminal Procedure.

2. What is the ground ? The cheque is dated 6.10.05 admittedly. The cheque was presented for collection through the collecting bank of the complainant. The collecting bank allegedly sent the cheque to the drawee bank. The drawee bank by dishonour memo dated 17.04.06 dishonoured the cheque and returned the same on the ground that there was insufficiency of funds. The complainant after observing the statutory formalities filed a complaint before the learned Magistrate and the learned Magistrate took cognizance of the offence alleged under Section 138 of the Negotiable Instruments Act.

3. The learned counsel for the petitioner contends that proviso (a) to Section 138 of the Negotiable Instruments Act has not at all been observed and consequently the cognizance taken is bad. The proviso (a) to Section 138 reads as follows:

"Provided that nothing contained in this section shall apply unless -

(a) the cehque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

4. It is imperative that the cheque must have been presented to the bank within a period of 6 months from the date on which it is drawn or within the period of its validity, whichever is earlier. Whatever be the period of validity of the cheque in the instant case, the cheque must be presented within a period of 6 months from the date on which it is drawn. The cheque admittedly is dated 6.10.05. The cheque must therefore have been presented by 6.4.06.

5. To whom must the cheque be presented ? Is it enough if the cheque presented before the collecting bank for collection or is the cheque to be presented before the drawee bank by that date ? The question does not admit on any doubt now in the light of the decision in **Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.** [2001(3) SCC 609]. It is very evident now that the presentation contemplated in proviso (a) is not presentation to any other bank for collection but presentation before the drawee bank for honouring the cheque. There can be no surviving doubt on that question of law after the decision in **Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd.** (supra).

6. It is now evident that the cheque has been presented well after elapse of the period of 6 months from the date on which it is drawn. The learned counsel for the complainant contends that the complainant had presented the cheque well before the date of expiry of 6 months before his bank ie. on 16.3.06 and that he is not responsible for any dealy in the drawee bank getting the cheque and issuing the memo of dishonour. The complaint has been produced as Annexure-A1. Significantly there is no averment whatsover that the cheque was presented before the drawee bank before the expiry of the period of 6 months as contemplated in proviso (a).

7. I do in these circumstances find that the complaint is not maintainable and the same deserves to be quashed.

8. In the result, this Crl.M.C is, allowed. S.T.No.1376 of 2006 before the Judicial Magistrate of the First Class-II, Peerumedu is hereby quashed.

(R.BASANT, JUDGE)

rtr/-